IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 34044 of 2007(C)

OS.740/2001 of II ADDL.M.C., ERNAKULAM
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PETITIONERS:
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1. K.K.BOSE, S/O KOCHUKUTTY,
RESIDING AT KIZHAKKEDATHU HOUSE,
CHALIKKAVATTOM, VENNALA, ERNAKULAM.

2. ANEESH, S/O K.K.BOSE,
RESIDING AT KIZHAKKEDATHU HOUSE,
CHALIKKAVATTOM, VENNALA, ERNAKULAM.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:
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1. MANJU SASIDHARAN, D/O PADMAVATHY,
RESIDING AT KIZHAKKEDATHU HOUSE,
EDAPPILLY SOUTH VILLAGE, KANAYANNUR TALUK.

2. K.K.SUGATHAN, S/O KOCHUKUTTY,
RESIDING AT KIZHAKKEDATHU HOUSE,
CHALIKKAVATTOM, VENNALA, ERNAKULAM.

3. DIVYA, D/O SUGATHAN,
RESIDING AT KIZHAKKEDATHU HOUSE,
CHALIKKAVATTOM, VENNALA, ERNAKULAM.

4. ALPHONSA MARGRET, W/O SURESH BABU,
RESIDING AT KIZHAKKEDATHU HOUSE,
EDAPPILLY SOUTH VILLAGE, KANAYANNUR TALUK.

5. BINOY, S/O SURESH BABU,
RESIDING AT KIZHAKKEDATHU HOUSE,
EDAPPILLY SOUTH VILLAGE, KANAYANNUR TALUK.

6. BIJOY, S/O SURESH BABU,
RESIDING AT KIZHAKKEDATHU HOUSE,
EDAPPILLY SOUTH VILLAGE, KANAYANNUR TALUK.

7. BINDYA, W/O AJITH,
RESIDING AT KIZHAKKEDATHU HOUSE,
EDAPPILLY SOUTH VILLAGE, KANAYANNUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34044 of 2007

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Dated this the 19th day of November, 2007.

JUDGMENT

This Writ Petition is filed against the order of the Munsiff, Ernakulam in I.A.No.3063 of 2007 in O.S.No.740 of 2001 whereby he refused permission to examine the Commissioner. There is another order, Ext.P11 in I.A.No.3065 of 2007. I.A.No.3065 of 2007 was filed for setting aside the Commissioner's report and the other for seeking permission to cross examine the Commissioner to show that the report is incorrect. The court below by Ext.P12 order held that "Trial can be started and during trial if it is found necessary, commission report and sketch can be set aside and till then this petition is only to be kept in abeyance. I do so." I feel that it is an erroneous approach adopted by the court below. When an application is filed for setting aside the Commissioner's report it indicates that in case of setting aside the same a fresh Commission may have to be issued for resolving the disputes between the parties. Suppose it is inter linked with the trial of the suit then after listing the suit and proceeding with the trial everything will break and it may have to remain as a part heard matter for months or years together. Therefore, when an

application for setting aside a Commissioner's plan and report is filed it is desirable and really necessary to dispose of them before the suit is included in the list for trial.

2. Therefore, I set aside the order passed by the court below and direct the court below to take the applications first, give an opportunity to examine the Commissioner and after hearing both sides dispose of the petitions in accordance with law and thereafter proceed with the trial of the case and dispose of the matter. If for the purpose of setting aside the Commissioner's report, oral evidence by way of cross examination of the Commissioner or of a party is necessary that shall be permitted and needless to say, the other side also be permitted to adduce evidence in support of their contentions.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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